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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/085,403

02/28/2002

Kenneth E. Flick

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08/23/2010

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EXAMINER

BROOKS, MATTHEW L

ART UNIT

PAPER NUMBER

3629

NOTIFICATION DATE

DELIVERY MODE

08/23/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/085,403

Applicant(s)

FLICK, KENNETH E.

Examiner

MATTHEW L. BROOKS

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to the Amendment/Req. Reconsideration-After Non-Final Rejection filing on 06/08/2010.

Status of Claims

2. Original claims 1-32 are currently pending. The rejection below has been affirmed at the board. Applicant has since the examiner was affirmed, has in the last round of prosecution added, "handheld" to some limitations. And in this round adds;

"processing the order at a handheld remote control feature package processing station;
and

wirelessly enabling from the handheld remote control feature package processing station the customer-selected handheld remote control feature package for the universal remote control device."

Claim Rejections - 35 USC § 102 (e)

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-32** are rejected under 35 U.S.C. 102(e) as being anticipated by Patent No.: 6,526,335 (Treyz).

5. With respect to **Claim 1**: Treyz discloses:

A method of providing a customer-selected handheld remote control feature package in a vehicle, the method comprising:

(a) installing a universal remote control device in the vehicle (Fig 7), the universal remote control device comprising a controller and a wireless receiver cooperating therewith for permitting wireless enabling the customer-selected handheld remote control feature package from among a plurality of possible handheld remote control feature packages (Fig 17 and Treyz throughout and at C1, 58-65 teaches software install on the automobile personal computer, software in and of itself enables features, Treyz also teaches the automobile personal computer controls everything from remote handheld key chain (C23, 1-23) to GPS (C1, 35-45) and in addition teaches wireless enabling at C19, 3-12);

(b) negotiating sale or lease of the vehicle with the customer and comprising

- (i) offering the plurality of possible remote control feature packages the customer (C2, 52-65 "price negotiate" Fig 12 and Fig 14; AND BPAI Decision - Examiner affirmed; 2009-004554, Decided October 20, 2009; p 7 "The recitation of "negotiating sale or lease of the vehicle with the customer" is considered inherent in sale or lease of the vehicle."), and
- (ii) accepting an order for the customer-selected handheld remote control feature package from the customer (C2, 52-65 "commitment made" and Fig 12 and Fig 14); and

(c) processing the order at a handheld remote control feature package processing station (Treyz – C22, 45-65; may be linked to service provider over communications network" and "may use an account database 348 to store information on the user account status" to "allow the user to subscribe to services"; is the same as processing at processing station, given that handheld remote, still encompasses the keychain device of Treyz, to act as a remote control to the just purchased satellite services);_and

(d) wirelessly enabling from the handheld remote control feature package processing station (Treyz - C22, 58-68; "These services may be provided using content sources that are maintained by the service provider"; providing services is equal to "enabling"; and is provided by many "wireless" means such as "satellite" and "signal") the customer-selected handheld remote control feature package for the universal

remote control device (C19, 3-12 and Fig 12, 294 and Fig 14 and Treyz teaches the automobile personal computer controls everything from remote key chain (C23, 1-23) to GPS (C1, 35-45) and in addition teaches wireless enabling at (C19, 3-12 and throughout entire specification). GPS is defined in the specification as one of the options of the "remote control feature package" and Treyz shows user in possession of vehicle with computer in it plus downloading software wirelessly which enables new features [Fig 12 and 14 and C2, 52-65 and C 57, 7-20]).

6. With respect to **Claim 16**: Treyz discloses:

A method of providing a customer-selected remote control feature package in a vehicle, the method comprising:

All of limitations as discussed in claim 1 above plus

(e) wherein providing, installing, negotiating and wirelessly enabling are performed by a plurality of different entities and further comprising sharing revenue among the different entities based on the negotiated customer-selected handheld remote control feature package (This is what a TPCD does; Treyz shows "TPCH"/processing center [C23, 1-23 and C57, 1-60 and C58, 5-10] and The fact that Treyz teaches a computer/box/URCD and that at any/some point a purchaser of the device is negotiating for svcs/RMCF (C2, 50-60) and then having the requested services wirelessly enabled, wherein the services taught by Treyz are GPS/handheld key remote etc; AND BPAI Decision - Examiner affirmed; 2009-004554, Decided October 20, 2009; p 7 "The recitation of "negotiating sale or lease of the vehicle with the customer" is considered inherent in sale or lease of the vehicle.").

7. With respect to **Claim 2 and 17**: Treyz discloses
delivering the vehicle to the customer after negotiating and prior to wirelessly enabling (Treyz shows user in possession of vehicle with computer in it plus downloading software wirelessly which enables new features [Fig 12 and 14 and C2, 52-65 and C 57, 7-20]).
8. With respect to **Claim 3 and 18**: Treyz discloses
installing is performed prior to negotiating (Treyz shows negotiation before and after installing (C2, 52-65 and C 57, 7-20).
9. With respect to **Claim 4 and 19**: Treyz discloses
wherein installing is performed after negotiating (Treyz shows negotiation before and after installing (C2, 52-65 and C 57, 7-20).
10. With respect to **Claim 5**: Treyz discloses
wherein the plurality of possible handheld remote control feature packages have respective different offering prices; and wherein the customer-selected handheld remote control feature package has a negotiated price associated therewith (Treyz teaches wireless enabling of remote control feature packages, certainly/inherently they must have different offer prices depending upon package type/ what is ordered [C2, 52-65 and C 57, 7-20]. AND Treyz teaches negotiating prices for services [C2, 52-65 and C 57, 7-20]).
11. With respect to **Claim 6**: Treyz discloses
negotiating and wirelessly enabling are performed by respective different entities; and further comprising sharing revenue between the different entities and based on the

negotiated price for the customer-selected handheld remote control feature package (This is what a TPCP does; Treyz shows "TPCP"/processing center [C23, 1-23 and C57, 1-60 and C58, 5-10]).

12. With respect to **Claim 7**: Treyz discloses

providing the universal remote control device; wherein the installing, negotiating, and wirelessly enabling are provided by respective different entities; and further comprising sharing revenue between the different entities and based on the negotiating price for the customer-selected handheld remote control feature package (This is what a TPCP does; Treyz shows "TPCP"/processing center [C23, 1-23 and C57, 1-60 and C58, 5-10]).

13. With respect to **Claim 8 and 20**: Treyz discloses

wherein the providing and wirelessly enabling are provided by a same entity (C22, 45-57 "single service provider").

14. With respect to **Claim 9 and 21**: Treyz discloses

wherein negotiating is performed by a vehicle dealer; and wherein installing is performed after vehicle delivery to the vehicle dealer (Treyz shows multiple ways of installing a personal computer/"universal remote control device" in car [C13, 12-37] including after delivery to user/manufacture/vehicle dealer/"third party installer" [C13, 12-37 and C16, 35-47 and C17, 14-27 and C18, 40-65 user/manufacture/vehicle dealer/"third party installer"]).

15. With respect to **Claim 10 and 22**: discloses

wherein negotiating is performed by a vehicle dealer; and wherein installing is performed prior to vehicle delivery to the vehicle dealer (Treyz shows multiple ways of installing a personal computer/"universal remote control device" in car [C13, 12-37] including after delivery to user/manufacture/vehicle dealer/"third party installer" [C13, 12-37 and C16, 35-47 and C17, 14-27 and C18, 40-65 user/manufacture/vehicle dealer/"third party installer"]).

16. With respect to **Claim 11 and 23**: Treyz discloses

installing comprises installing the universal remote control device perform at least one of handheld security, handheld remote keyless entry and handheld remote engine starting features associated with respective customer-selected handheld remote control feature packages (C16, 35-47 and C2, 1-5 and Fig 17, 356).

17. With respect to **Claim 12 and 24**: Treyz discloses

security comprises vehicle position tracking (C1, 35-45 and C2, 24-30).

18. With respect to **Claim 13**: Treyz discloses

the universal remote control device comprises a GPS receiver for performing the vehicle position tracking (C1, 37-45).

19. With respect to **Claim 14 and 25**: Treyz discloses

the wireless receiver comprises a cellular radio receiver; and wherein the wirelessly enabling comprises using a cellular radio transmitter (Fig 11 and C18, 40-68 and C17, 14-26 and Fig 12, 294).

20. With respect to **Claim 15 and 26**: Treyz discloses

the vehicle comprises a data communication bus extending there through; and wherein installing comprises connecting the universal remote control device to the vehicle data communication bus (C15, 40-47 "communications bus").

21. With respect to **Claim 27**: Treyz discloses

A system for providing a customer-selected remote control feature package in a vehicle, the system comprising:

(a) a universal remote control device for installation in the vehicle, said universal remote control device comprising a controller and a wireless receiver cooperating therewith for permitting wireless enabling of the customer-selected handheld remote control feature package from among a plurality of possible handheld remote control feature packages (Fig 17 and C18, 40-69); and

(b) customer-selected handheld remote control feature package processing station for

(i) receiving an order for the customer-selected remote handheld control feature package (Fig 16, 352 and "TPCH" discussed above),

(ii) wirelessly enabling the customer- selected remote control package for the universal remote control device based upon the order (C18, 40-69), and
(iii) sharing revenue among different entities based upon the customer-selected handheld remote control feature package (C18, 40-69).\

22. With respect to **Claim 28**: Treyz discloses

customer-selected handheld remote control feature package processing station comprises an accounting database for sharing the revenue (C22, 54-56).

23. With respect to **Claim 29**: Treyz discloses

universal remote control device performs at least one of handheld remote security, handheld remote keyless entry and remote engine starting features associated with respective customer- selected remote control feature packages (Fig 17).

24. With respect to **Claim 30**: Treyz discloses

universal remote control device comprises a GPS receiver for performing vehicle position tracking (C1, 36-47).

25. With respect to **Claim 31**: Treyz discloses

wireless receiver comprises a cellular radio receiver; and wherein said processing station wirelessly enables the customer-selected handheld remote control feature package using a cellular radio transmitter (C12, 21-44).

26. With respect to **Claim 32**: Treyz discloses

the vehicle comprises a data communication bus extending there through; and wherein said universal remote control device interfaces to the vehicle data communication bus (Fig 7 and C16, 40-47).

Response to Remarks

27. Applicant's arguments REMARKS, filed 06/08/2010 have been fully considered but they are not persuasive.

28. With respect to the first argument found under, Heading II; "the amended claims are patentable"; **page 13**; Applicant states (emphasis added):

"This portion of Treyz et al. discloses remote enabling of satellite radio. Nevertheless, Applicant submits there is a difference between wirelessly enabling the satellite radio, as disclosed by Treyz et al., and the claim feature of **wirelessly enabling from the handheld remote control feature package processing station the customer-selected handheld remote control feature package for the universal remote control device**, as recited by amended independent Claim I, for example."

This assertion is false.

First see BPAI Decision - Examiner affirmed; 2009-004554, Decided October 20, 2009; bottom of pg 3; "wherein the "wirelessly enabling the customer-selected remote control feature package for the universal remote control device" is "given the broadest reasonable interpretation in light of the specification".

Second see, at least, BPAI Decision - Examiner affirmed; 2009-004554, Decided October 20, 2009 findings of fact FF1, FF5, and FF6 as to what Treyz discloses (attached directly below, emphasis added).

FF1. Treyz discloses an automobile personal computer system (Title) with wireless communication capabilities (Col. 1:28-31). **Settings for the personal computer system may be adjusted using computing devices that are separate from the automobile personal computer** (Col. 1:60-63).

FF2. Treyz discloses that a user may log onto a web site and subscribe to a digital satellite service available from the automobile manufacturer (Col. 22:24-27).

FF3. **Treyz discloses that data that enables the automobile personal computer to obtain the satellite service may be downloaded to the personal computer.** The user may provide a code for the personal computer to activate the service (Col. 22:29-34).

FF4. Treyz discloses that the services may include music services, news services, communication services, and data services (Col. 22:56-58) and satellite radio (Col. 22:64).

FF5. **Treyz discloses that a wireless device such as a key chain may be used to control the automobile personal computer** (Col. 23:23-25).

FF6. Treyz discloses that a wireless key chain device and personal computer may be used to open the door locks, start the engine, adjust the heat and air conditioning, control the wipers, and control the headlights and rear defogger (Col. 23:29-41).

Therefore, because the services are still controllable by the keychain remote, it is clear that the current "handheld remote control feature package" limitation still does not avoid the teachings of Treyz (Also - see 102 (e) above AND sentence 29 analysis below).

29. With respect to p. 13, second full paragraph, Applicant states:

"Moreover, in an alternative argument, the Examiner correctly notes that Treyz et al. **fails to disclose wirelessly enabling the customer-selected handheld remote control feature package for the universal remote control device, as recited by amended independent Claim 1, for example.** The Examiner contends that this deficiency of Treyz et al. is simply a measure of size and dimension and therefore obvious to the person of ordinary skill in the art."

First note, the argument is moot as the 103 on those grounds is no longer applied.

Although the 103 rejection previously made is now moot, Applicant's words above, mischaracterize Examiners previous 103 alternative grounds, looking at page 10 of the office action, Examiner never stated that Treyz "fails to disclose wirelessly enabling the customer-selected handheld remote control feature package for the universal remote control device." Also, a 102 rejection was made that showed such; and in the Remarks from the same Non-Final Action, sent 2/8/2010; advised Applicant how the "handheld" limitation was being read.

Also, the Board confirmed that indeed the exact opposite is true, the handheld limitation was already a finding of fact in the in the Appeal 2009-004554, Decided October 20, 2009; "FF 5; that a wireless device such as a key chain may be used to control the automobile personal computer." And at FF 3, found that - Treyz **discloses that data that enables the automobile personal computer to obtain the satellite service may be downloaded to the personal computer.** The user may provide a code for the personal computer to activate the service (Col. 22:29-34). AND that, FF5. Treyz **discloses that a wireless device such as a key chain may be used to control the automobile personal computer** (Col. 23:23-25).

ALSO, Examiner incorporates remarks made in, the prior action to this Final, Non-Final Action, sent 2/8/2010, that it was taught, and the 103 was only made because the additional "handheld" limitation only "confused the issue". To be clear, Examiner never made a statement in the record as Applicant states on bottom of p. 13 Remarks (6/8/2010).

30. In reply to p. 14, first full paragraph,

"Accordingly, it is not the size of the remote control being modified, but the available features in the feature package."

This is not the case – as the satellite music services are still a feature in the remote package.

Therefore, Applicant has not done what the Board advised as there is still "no limitation placed on what package specifically may be wirelessly enabled in this claim construction." (See BPAI Decision - Examiner affirmed; 2009-004554, Decided October 20, 2009; bottom of pg 6, last full paragraph).

And the Board said it best that in, "Turning to Treyz, it is disclosed that a user may subscribe to digital satellite service that is available from the automobile manufacturer over a web site (FF2). The automobile personal computer is provided with a code to activate the services (FF3). The services may include for example music services, new services, and data services (FF4). Thus we determine that the automobile personal computer serves as a "remote control device" to activate or "enable" the

customer selected satellite radio "music package" wirelessly, meeting the claimed limitation. There is no limitation in claim 1 that would prohibit the "remote control feature package" from being selected from the packages of music services, new services, or data services received by satellite radio." (See BPAI Decision - Examiner affirmed; 2009-004554, Decided October 20, 2009; bottom of pg 6, bridging p. 7)

That above statement, combined with the Board's FF5. Treyz **discloses that a wireless device such as a key chain may be used to control the automobile personal computer** (Col. 23:23-25). Is facts why Treyz teaches handheld remote control feature package" as now currently claimed.

31. In reply to the top of REMARKS, p 15, which again is in reply to an alternative 103 rejection, now withdrawn, Applicant states "instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness)" and cites KSR v. Teleflex, 550 U.S. 398 (2007). Again the present rejection that stands is 102 (e) above and KSR analysis is proper for 103 only.

However, even if Examiner had again, this action made a 103, Applicants' "submission", found in the middle of page 15 that; "...the Examiner **must** provide some rationale **why** the person of ordinary skill in the art would take the remote subscription capability for satellite radio in Treyz et al. **and expand it to the wireless key fob teachings.**"; is not true.

This is because Applicant has not once in all of the claims 1-32, claimed what he is now demanding must be shown; and what Applicant does currently claim Treycz anticipates.

Thus, In response to 06/08/2010 Remarks, p 15, argument that the applied references fail to show certain features of the invention, it is noted that the features upon which Applicant relies (i.e., "**key fob teachings**") are not recited in the rejected claims 1-32. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

32. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW L. BROOKS whose telephone number is (571)272-8112. The examiner can normally be reached on Monday - Friday; 8 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PLUCINSKI JAMISUE can be reached on (571)272-6811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew L. Brooks/
Patent Examiner, GAU 3629
8/16/2010